

CAHILL GORDON & REINDEL LLP  
EIGHTY PINE STREET  
NEW YORK, NY 10005-1702

FLOYD ABRAMS  
L. HOWARD ADAMS  
ROBERT A. ALESSI  
HELENE R. BANKS  
ANIRUDH BANSAL  
LANDIS C. BEST  
BRADLEY J. BONDI  
SUSAN BUCKLEY  
KEVIN J. BURKE  
JAMES J. CLARK  
BENJAMIN J. COHEN  
SEAN M. DAVIS  
STUART G. DOWNING  
ADAM M. DWORKIN  
ANASTASIA EFIMOVA  
JENNIFER B. EZRING  
JOAN MURTAGH FRANKEL  
JONATHAN J. FRANKEL

BART FRIEDMAN  
CIRO A. GAMBONI  
CHARLES A. GILMAN  
JASON M. HALL  
WILLIAM M. HARTNETT  
CRAIG M. HOROWITZ  
DOUGLAS S. HOROWITZ  
TIMOTHY B. HOWELL  
DAVID G. JANUSZEWSKI  
ELAI KATZ  
THOMAS J. KAVALER  
BRIAN S. KELLEHER  
DAVID N. KELLEY  
RICHARD KELLY  
CHÉRIE R. KISER\*  
EDWARD P. KRUGMAN  
JOEL KURTZBERG  
MARC R. LASHBROOK

TELEPHONE: (212) 701-3000  
WWW.CAHILL.COM

1990 K STREET, N.W.  
WASHINGTON, DC 20006-1181  
(202) 862-8900

CAHILL GORDON & REINDEL (UK) LLP  
24 MONUMENT STREET  
LONDON EC3R 8AJ  
+44 (0)20 7920 9800

WRITER'S DIRECT NUMBER

202-862-8950  
ckiser@cahill.com

ALIZA R. LEVINE  
JOEL H. LEVITIN  
GEOFFREY E. LIEBMANN  
ANN S. MAKICH  
JONATHAN I. MARK  
BRIAN T. MARKLEY  
WILLIAM J. MILLER  
NOAH B. NEWITZ  
MICHAEL J. OHLER  
ATHY A. O'KEEFFE  
DAVID R. OWEN  
JOHN PAPACHRISTOS  
LUIS R. PENALVER  
KIMBERLY PETILLO-DÉCOSSARD  
MICHAEL W. REDDY  
JAMES ROBINSON  
THORN ROSENTHAL  
TAMMY L. ROY

JONATHAN A. SCHAFFZIN  
JOHN SCHUSTER  
MICHAEL A. SHERMAN  
DARREN SILVER  
HOWARD G. SLOANE  
JOSIAH M. SLOTNICK  
RICHARD A. STIEGLITZ JR.  
SUSANNA M. SUH  
ANTHONY K. TAMA  
JONATHAN D. THIER  
JOHN A. TRIPODORO  
GLENN J. WALDRIP, JR.  
HERBERT S. WASHER  
MICHAEL B. WEISS  
S. PENNY WINDLE  
DAVID WISHENGRAD  
COREY WRIGHT  
JOSHUA M. ZELIG  
DANIEL J. ZUBKOFF

\*ADMITTED IN DC ONLY

April 29, 2015

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: WC Docket No. 12-375 – Written Ex Parte Presentation  
Global Tel\*Link Corporation**

Dear Secretary Dortch:

Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its attorneys, hereby submits this response to the April 20, 2015 *ex parte* notice filed by counsel for Martha Wright, *et al.* (the “Petitioners”).<sup>2</sup> The Petitioners inaccurately summarize GTL’s position regarding the need for the Federal Communications Commission (“FCC” or “Commission”) to reaffirm in its upcoming decision that the FCC did not make a determination in the *ICS Order and First FNPRM*<sup>3</sup> that interstate

<sup>1</sup> This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

<sup>2</sup> Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, FCC (dated Apr. 20, 2015).

<sup>3</sup> *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order and First FNPRM*”), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

Marlene H. Dortch  
Secretary  
April 29, 2015

inmate calling service (“ICS”) rates in effect prior to the issuance of its *ICS Order* were unjust and unreasonable or that its decision was to apply retroactively.<sup>4</sup>

Petitioners’ counsel completely misrepresents GTL’s prior statements. At no time has GTL asked the FCC to “grant [a] blanket exemption from class action lawsuits.” The word “exemption” does not appear in GTL’s filing, and there is nothing in GTL’s filing to suggest that GTL is asking the FCC to take any action with respect to the pending class action lawsuits against GTL.

The misleading description offered by Petitioners’ counsel does not accurately reflect the substance or purpose of GTL’s request. As GTL explained, numerous plaintiffs have argued that the mere existence of the interim interstate ICS rate caps in the *ICS Order and First FNPRM* constitutes a finding by the FCC that the interstate ICS rates charged by a particular ICS provider prior to the effective date of the *ICS Order and First FNPRM* were unjust and unreasonable.<sup>5</sup> For example, plaintiffs boldly have claimed that the *ICS Order and First FNPRM* “unequivocally determined that GTL has, for many years, violated the [federal Communications Act of 1934, as amended].”<sup>6</sup> This is incorrect and misinterprets the FCC’s findings in the *ICS Order and First FNPRM*.

As the FCC has stated, it did not “regulate interstate ICS rates” prior to the *ICS Order and First FNPRM*.<sup>7</sup> Accordingly, GTL has asked the FCC to underscore the precedential, hands-off, competitive-carrier regulatory regime in which interstate ICS rates operated prior to the issuance of the *ICS Order and First FNPRM* to give clear and unambiguous guidance to the courts addressing these issues. The detailed, legal rationale for GTL’s request is set forth in its April 3 Letter.

The *ICS Order and First FNPRM* contains no finding that the existing interstate ICS rates of a particular provider were *per se* unlawful, and did not determine that past interstate ICS rates were unjust and unreasonable. The FCC found only that, going forward, it would “create a *new framework* to ensure that interstate ICS rates are just and reasonable.”<sup>8</sup> In this regard, the FCC stated that it was conducting its review of ICS rates to:

---

<sup>4</sup> Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, FCC, at 21-23 (dated Apr. 3, 2015) (“GTL April 3 Letter”).

<sup>5</sup> GTL April 3 Letter at 22.

<sup>6</sup> See, e.g., No. 5:14-cv-5275-TLB, *In re Global Tel\*Link Corporation ICS Litigation*, Amended Consolidated Class Action Complaint, ¶ 32 (W.D. Ark. filed Apr. 23, 2015); see also No. 2:15-cv-02197-MAM, *Reese, et al. v. Global Tel\*Link Corporation*, Class Action Complaint, ¶¶ 32, 34 (E.D. Pa. filed Apr. 23, 2015); see also, e.g., No. 2:13-cv-04989-WJM-MF, *James v. Global Tel\*Link Corporation*, Complaint and Demand for Jury Trial (D.N.J. filed Aug. 20, 2013); No. 1:14-cv-456, *Chruby v. Global Tel\*Link Corporation*, Complaint (E.D. Va. filed Apr. 24, 2014); No. 14-5275, *Stuart v. Global Tel\*Link Corporation*, Class Action Complaint (W.D. Ark. filed Sept. 4, 2014); No. 15-5048-PKH, *Murilla v. Global Tel\*Link Corporation*, Class Action Complaint (W.D. Ark. filed Feb. 13, 2015); No. 1:15-cv-0593, *Cooper v. Global Tel\*Link Corporation*, Class Action Complaint (N.D. Ga. filed Feb. 27, 2015).

<sup>7</sup> *ICS NPRM* ¶ 2.

<sup>8</sup> *ICS Order and First FNPRM* ¶ 47 (emphasis added).

- seek comment on how “any new ICS rules” or “any new Commission rules or obligations” would interact with existing contracts;<sup>9</sup>
- “examin[e] new ICS regulations;”<sup>10</sup>
- ask about the effect of “any new ICS-related rules,” “any new ICS rules,” or “a new ICS regime” on existing contracts;<sup>11</sup>
- seek comment to “consider whether changes to [the] rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities;”<sup>12</sup> and
- implement “[p]ossible new rules [that] could affect all ICS providers, including small entities.”<sup>13</sup>

The FCC’s “new framework” for interstate ICS rates<sup>14</sup> does not support the challenges to ICS providers’ historical interstate ICS rates, or amount to a finding by the FCC that ICS providers have violated the Act or FCC regulations.<sup>15</sup>

Inclusion of the language requested by GTL in the FCC’s upcoming decision is consistent with the law and the FCC’s prior statements, and will resolve ongoing controversy in the ICS market. It will in no way act as a “blanket exemption” from class action lawsuits, or prevent potential plaintiffs from challenging ICS rates. The language simply will eliminate the ability of plaintiffs to inaccurately characterize the *ICS Order and First FNPRM* in court pleadings to support their allegations regarding ICS rates in effect prior to the issuance of the FCC’s decision.

---

<sup>9</sup> *ICS Order and First FNPRM* ¶ 98.

<sup>10</sup> *ICS Order and First FNPRM* ¶ 106 (noting that the FCC “has been examining new ICS regulations for years”).

<sup>11</sup> *Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629, ¶¶ 45-46 (2012) (“*ICS NPRM*”); see also *id.*, Statement of Commissioner Ajit Pai (“Today we launch a proceeding to consider new rules for interstate inmate calling services. . .”).

<sup>12</sup> *ICS NPRM* ¶ 1.

<sup>13</sup> *ICS NPRM*, Appendix C, ¶ 16

<sup>14</sup> The United States Supreme Court has concluded that “administrative rules will not be construed to have retroactive effect unless their language requires this result.” See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1998); see also *Simmons v. Lockhart*, 931 F.2d 1226, 1230 (8th Cir. 1991) (“we will not retroactively apply statutes or regulations without a clear indication that the legislature or administrative agency intends to diverge from the norm of acting prospectively.”). “[T]he principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (internal quotation marks omitted).

<sup>15</sup> *ICS NPRM* ¶¶ 45-46.

Marlene H. Dortch  
Secretary  
April 29, 2015

Pursuant to Section 1.1206(b) of the FCC's rules, a copy of this notice is being filed in the appropriate docket.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

*/s/ Chérie R. Kiser*

Chérie R. Kiser

Counsel for Global Tel\*Link Corporation

cc (via e-mail): Rebekah Goodheart  
Allanté Keels  
Carter McMillan  
Pamela Arluk  
Lynne Engledow  
Douglas Galbi  
Gregory Haledjian  
Rhonda Lien  
Thomas Parisi  
Don Sussman